

June 27, 2012

Care'e Belcher
5662 Donohoe Ave.
Eugene, OR 97402



RE: Formal complaint regarding HomeSource Family Charter PERS payment practices

Dear Ms. Belcher,

On June 11, 2012 you submitted a formal complaint to Bethel School District. Previously, you sought resolution of your complaint at HomeSource Family Charter (HFC) but were unsatisfied with the response. As HFC is a public charter school sponsored by the Bethel School District, you chose to raise your concern to the District level of Bethel's formal complaint process (outlined in [Bethel Board Policy and Administrative Rule KL](#)).

I have completed my investigation of your complaint. My findings and proposed resolution are outlined below. If you are unsatisfied with the resolution outlined here, you have 10 days to notify me that you wish to appeal my decision to the Bethel School Board. The directions for this process are also outlined below.

It should be noted that during the process of this investigation you resigned your employment with HFC. That action has no bearing on the processing of your complaint or the resolution I have outlined.

Complaint:

My understanding of your complaint, summarized after communication with you, is:

HFC has been withdrawing employee contributions from employee payroll for employee PERS accounts. However, HFC has not submitted those employee PERS contributions nor the employer PERS contributions to PERS. Rather, these funds, through actions of HFC Management and Board, have been either accumulated in an account or applied to general operation finances. Further, there was no notice to HFC staff members regarding this use of PERS funds until a May 15, 2012 meeting even though HFC began employing PERS eligible employees in October, 2010. Further, there are concerns that information provided regarding your personal PERS accounting may be incorrect. Further, there are concerns that communication regarding HFC's intention and timeline for paying its PERS obligation has been changed since the May 15, 2012 meeting and that it is unclear whether or when the PERS obligation will actually be paid. Finally, a concern was raised that Paula Praus-Williamson has committed "actions of bullying and harassment".

As part of your complaint submission you suggested a number of remedies. My understandings of your suggested remedies, summarized after communication with you, are:

- You wish to have all employer and employee PERS obligations paid in full. Your hope is for this to take place immediately, but absolutely no later than July 31, 2013.

- You wish to have a corrected report of the total amount of PERS contributions owed to PERS on your behalf, broken down by employer contribution and employee contribution as well as an accounting of any lost interest.
- You wish to be provided with an individual plan for when all funds (payment-by-payment) will be paid to your PERS account (both employer and employee contributions).
- You asked for a copy of the findings of this investigation and any directive from Bethel School District to HFC regarding this issue.
- You also asked for a back-up payment plan if HFC is unable to meet their PERS obligation for any reason.

Investigation:

My investigation included interviews and verbal or written communication with the complainant; HFC Executive Director Paula Praus-Williamson; HFC Board Director Ward Christman; HFC Financial Manager Kathy Niemeyer; various HFC Staff Members; Bethel Business Manager Ellen Mooney; Bethel Assistant Superintendent Chris Parra; PERS Contributions and Banking Manager Mary Smith; PERS Membership and Employer Relations Karen Chavez; ODE- Office of the Superintendent, Government and Legal Affairs Manager Cindy hunt; ODE-Learning Opportunities, Options & Supports, Director Susan Inman; and ODE-Office of Educational Improvement and Innovation Program Analyst, Charter Schools Kate Pattison.

The investigation probed into each aspect of the complaint. It included a review of Oregon Charter School Law and Administrative Rules, Oregon Revised Statutes related to the PERS system, Bethel School District Charter School Policy and Administrative Rule, and the Charter Sponsorship Contract Agreement between Bethel School District and HFC.

Findings of Fact:

Facts relating to HFC's PERS obligation:

- HFC has been collecting the employee 6% contribution to PERS accounts from employee payroll since at least September, 2011. Some contributions were collected prior to that date for previously eligible PERS employees.
- HFC maintained PERS employee contribution funds in an account until June 5, 2012 when the HFC Board took action to make the funds available for general operations. This decision was made in tandem with a plan to pay the PERS obligation over a two-year period.
- It is not clear that HFC maintained a similar account for PERS employer contribution funds.
- Since HFC began operation as a public charter school it has made one payment to PERS in September, 2011. No other employee or employer PERS contributions have been made.
- As of May 29, 2012 HFC owed PERS \$121,575.82.
- It is clear via communication with PERS staff and ORS 238.705 that PERS has no authority to enter into an agreement to pay a PERS obligation over a two-year period. ORS 238.705 (1) states, "All public employers that are members of the system shall promptly and regularly remit to the Public Employees Retirement Board all contributions required of them by law and furnish all reports required by the board."

Facts relating to HFC's communication of the PERS issue:

- While there may have been no intention to mislead staff on the state of HFC's PERS obligation, it is clear that communication with staff was not a priority and did not occur until May of 2012.

- HFC employees discovered the issue when they received personal statements from PERS in the spring of 2012. This is prior to any overt communication from HFC leadership to its employees.
- It was only when employees brought the issue to leadership at HFC that a meeting was held with staff on May 15, 2012.
- In a review of HFC Board Minutes, it appears the PERS debt and a plan for deferment was first discussed in March, 2012.
- At the May 15, 2012 meeting with employees the longstanding PERS debt information was shared with staff. Staff were informed that HFC had developed a payment deferment plan with PERS and they would pay PERS over a one-year period of time. It was later communicated (after the meeting) that the deferment plan would occur over a two-year time span. It was also shared that the PERS employee contributions that HFC had been collecting would then be used for general operations (payroll, etc). It was also shared in this meeting that the Bethel School Board was aware of HFC's PERS deferment plan.
- On May 16, 2012 (one day after the meeting with HFC staff) HFC leadership notified the District of their PERS debt and their deferment plan. The deferment plan was presented as a plan co-developed by PERS and HFC. The District immediately requested from HFC written confirmation and approval of this plan by PERS. In this meeting HFC also admitted to being late with payment for their 2010-11 audit and some attorney bills (totaling approximately \$13,000).
- It was not until June 13, 2012 that HFC Executive Director Paula Praus-Williamson delivered written communication from PERS regarding the PERS deferment plan. The June 11, 2012 email from PERS to HFC states, "As we discussed earlier, PERS has an obligation to the retirees and has no authority to enter into an agreement with an employer for less than full payment on the due date. As it is not our desire to add additional hardship to struggling employers we have worked with the employers to get their accounts current. However, we can not [sic] enter into a formal agreement. (See ORS 238.705 & 238.710)". In the highlighted portion of this email message it is clear that PERS has no authority to defer payments for HFC, however they do have a desire to work with HFC to get their accounts current.
- Previous to the May 16, 2012 meeting with HFC, the District had been told that HFC staff were working with PERS because they were having trouble calculating their PERS statements. Prior to this meeting HFC never informed the District that they had not made timely, regular payments to PERS.
- During the December 8, 2011 HFC site evaluation Bethel Assistant Superintendent Chris Parra met with HFC Financial Manager Kathy Niemeyer. Kathy walked Chris through an employee's paycheck. Chris specifically asked about the paycheck process and PERS. Kathy showed Chris the employee deductions and the reporting to PERS. At that time, Chris' assumption was that the money deducted from the employee's account was being forwarded to PERS (along with the reporting); however, at no time did Kathy indicate that the money was not, in fact, being forwarded to PERS.

Other related facts:

- On or about June 11, 2012 Care'e Belcher received an accounting of HFC's PERS obligation to her PERS account. The employer PERS contribution percentages in at least October-December of 2010 appear to be incorrect.
- PERS staff informed me that when employee PERS contributions are not made, eligible PERS members do not have access to their IAP benefits and PERS members' IAP accounts are not receiving interest on any funds missing from those accounts.

- The employee and employer PERS contribution liabilities are currently not on HFC's balance sheet. However, Kathy Niemeyer assured the District that the liabilities will be booked by June 30 so they are reflected in the audit report.
- HFC has not paid for the auditor for their 2010-11 audit.
- HFC Leadership and Board Members has failed to keep PERS obligations and payments up-to-date.
- HFC Leadership and Board Members have been negligent in informing staff of its failings related to PERS obligations and payments in a timely manner.
- HFC Leadership and Board Members have been negligent in informing the Bethel School District of its failings related to PERS obligations and payments in a timely manner.
- HFC Leadership and Board Members have been negligent in adequately problem-solving its failings related to PERS obligations and payments with staff and with the sponsoring District.

Resolution:

I will prepare a directive memorandum to be sent to HFC Executive Director and Board Members before the end of the week. The memorandum will include the following directives:

- Develop a plan to pay the current PERS debt in full by July 31, 2012.
- Provide an accurate report of the total amount of PERS contributions owed to PERS on behalf of each HFC employee, broken down by employer contribution and employee contribution as well as an accounting of any lost interest.
- All future payrolls shall be completed in the same month employees are paid; the District suggests the 25th of the month payroll. By having a 25th of the month payroll, payroll expenses, including payroll taxes and PERS will all be reflected in the month they are earned and payable. The final June 2012 payroll should be completed on June 28th, so that all associated costs can be paid on June 29, 2012. This maintains the 2011-12 year expenses in the correct fiscal year.
- Provide proof to the District of payment for the 2010-11 audit prior to HFC's request for July SSF revenue.
- Provide proof to the District of overdue debt (except PERS) prior to HFC's request for July SSF revenue.
- Provide a 90 day "aged listing" to reflect any outstanding debt to the District prior to HFC's request for July SSF revenue.
- Provide a copy of all June, July and August PERS statements to the District.

Additionally, the memorandum will include the following notifications:

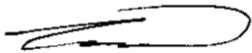
- Bethel School District has reported this issue to the Oregon Department of Education and will submit a copy of this complaint response, the directive memorandum, as well as any other documents requested by the agency.
- Bethel School District will submit a copy of this complaint response, the directive memorandum, as well as any other documents requested by the agency to the Teacher Standards and Practices Commission and other agencies as suggested by the Oregon Department of Education.
- Bethel School District will notify HFC that the directives outlined above must be completed in a timely manner; otherwise the District will seek termination of its sponsorship of HFC.

Care'e, I believe this resolution meets the spirit of the remedies you have sought through this complaint process. Should HFC be unable to meet its PERS obligation, then other authorities may be called upon to rectify the situation. Speaking for the District, I apologize for HFC's actions and I applaud you for bringing them to the attention of the District.

Appeal Process:

If the complainant is dissatisfied with the decision of the superintendent or designee, the individual may, within 10 calendar days of the date of the written decision, file a written, signed complaint with the District Board of Directors in care of the Superintendent of Bethel School District. The Superintendent shall provide the Board with copies of the complaint. If the Board decides to provide the complainant with an opportunity to be heard, the date will be set and concerned parties will be notified. If not, the superintendent shall notify the complainant that the previous decision stands. The Board will discuss a complaint against a student or employee only in executive session, as provided in ORS 192.660(1)(b), unless the parent, student, or employee requests the matter to be discussed in open session. A decision to uphold, modify, or reverse the previous decision shall be rendered within 30 calendar days of the Board hearing.

Sincerely,



Colt Gill
Superintendent

Copy:

- Paula Praus-Williamson; HomeSource Family Charter, Executive Director
- HomeSource Family Charter Board Directors
- Bethel School Board Directors
- Cindy Hunt; ODE- Office of the Superintendent, Government and Legal Affairs Manager
- Susan Inman; ODE-Learning Opportunities, Options & Supports, Director